

that the said Gabriel, being called for his interest, might, notwithstanding the renunciation produced, propone the foresaid allegiance.

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1649. *December 27.* The Poor Woman MARTINE *against* HOME.

THE poor woman Martine, in the pursuit of reduction, *propter matrimonium non secutum*, of a disposition made, *intuitu matrimonii*, is assoilyied from any charges alleged made by the bastard, who was to marry her, and whose gift of bastardy, the defender, Home, had taken; and she preferred to prove, that she put him in possession of a going mill and houses noways ruinous, so that the maills and duties might supply all, being intromitted with by him. Neither can the infestment be thought profitably purchased from the house of Coldinghame, since the king was become superior.

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1649. *December 29.* WALTER KINNAIRD of COUBINE *against* WALTER CHAMBERS.

It was found farther for Chambers against Coxtoune's cautioner, that, seeing he could not repossess him, he should be liable for the principal sum and bygone annuals, although there was no requisition granted by the contract of wadset; because that was alleged to be Chambers's damage and interest, and the cautioner would get his relief off his friend Coxtoune, being thought to have borrowed his brother's name for eluding the poor man.—*See page 445.*

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1649. *December 29.* GLADSTONES *against* The SHERIFF of TEVIOTDAILL.

THE letters were found orderly proceeded at Gladstones's instance against the Sheriff of Teviotdaill, for entering him to the possession of certain lands. And the words of an alternative, "or to suffer him to enter," were not respected; because he had suffered his eldest son to take a new right of the said lands for debarring the poor man. And the Lords decerned for the bygone maills, with £100 of expenses if he entered him betwixt and Whitsunday; otherwise, that the whole 500 merks decerned of before should stand.

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1649. *December 29.* ROBERT NAIRNE *against* MOUBRAY and JARVIE.

IN the summons of double pointing raised by Mr Robert Nairne against

Moubray and Jarvie, Moubray was preferred, upon a prior disposition, suppose a posterior seaisine, against Jarvie his son, who had a prior seaisine by virtue of a posterior disposition, *quia inter conjunctas personas*; and whereas Jarvie's contract of marriage, bearing to infest the heirs of that marriage, was alleged to fortify that disposition, he could not be heir till his father died; and then, also, it behoved him to warrant his father's deed.

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1649. December 29. JAMES ANDERSONE *against* JOHN ROB.

IN the reduction of John Rob his service and retour by James Andersone, it was alleged, That the said James was son to James, who was son to Margaret Rob, the sister of the defunct's father, who had no brethren; and so John Rob his retour, whereby he was served heir to the defunct, as brother's children, must fall and be reduced. The Lords, before answer, would have some documents and witnesses, *hinc inde*, to be produced; and even of the assysours, who are not only judges, but witnesses: also who may be challenged, even as false witnesses, *et quod temere jurarint super assisa*. But [this] is much neglected in this age; and the old law, well constituted by our predecessors, shamefully eluded by general services, serving *affirmativè*, if none compear in the contrary, suppose they never knew the purchaser of the brieve his kindred; where it should be *per fideles homines patriæ qui optime norunt*.

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1649. December 29. LOWRIE *against* M'CALL.

IN the reduction, Lowrie against M'Call, upon the commission of an irritant clause for not-payment of feu-duty, the Lords thought it somewhat rigorous, that, because the superior offered what the buyer, within this two or three years, had given for the land. The Lords desired them to tryst upon it before some of their own number.

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1649. December 29. CLAXSTONE and WALDO *against* ROBERT FOULES.

IN the process, Claxstoune and Waldo against Robert Foules, for certain wares alleged directed to be sent home by one Buchane, servant to John Rinde, and received by the said John or Robert Foules, his partner, and converted to their use, which could not be proven but by the said Robert his oath,—the Lords absolved him, in respect of his deposition denying all, except only that anent the copartnery or society; which, notwithstanding, was mistick, because not